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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/701,153

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Paul Raymond Rust

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10/07/2011

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EXAMINER

LAUX, JESSICA L

ART UNIT

PAPER NUMBER

3635

NOTIFICATION DATE

DELIVERY MODE

10/07/2011

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket-ip@dewittross.com

Office Action Summary	Application No. 10/701,153	Applicant(s) RUST ET AL.	
	Examiner JESSICA LAUX	Art Unit 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 5-9, 11-13, 15-25 and 28-34 is/are pending in the application.
- 5a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 6) ☐ Claim(s) ____ is/are allowed.
- 7) ☒ Claim(s) 5-9, 11-13, 15-25, 28-34 is/are rejected.
- 8) ☐ Claim(s) ____ is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Acknowledgment is made of the amendment filed 7/7/2011. Accordingly the claims have been amended.

Response to Arguments

Applicant's arguments filed 7/7/2011 have been fully considered but they are not persuasive.

Applicant's argument that Buis is not directed to a tape that bridges gaps between modular building and therefore cannot anticipate claim 5 is not persuasive, because the claim only functionally recites that the tape bridges gaps, and the tape of Buis, while not expressly disclosed as bridging gaps of building modules, certainly is capable of being used in such a way. Therefore, Buis does anticipate claim 5.

Applicant's argument that there is no basis for supporting that the tape of Buis is capable of the claimed bridging without sagging that Applicant's invention is capable of is not persuasive. The office clearly provides technical reasoning to support the determination that Buis does anticipate the claimed limitations. The claimed tape of Applicant's invention is the same as the disclosed tape of Buis, therefore just as Applicant's tape is capable of bridging a gap of 4 inches without sagging more than 0.5 inches, so is the tape of Buis, as there are not structural features which enable the tape of Applicant's invention to meet this limitation while the tape of Buis is unable to.

Applicant's argument that Buis discloses that it is not fit for the heavier duty role of bridging gapes between building modules is not persuasive. The fact that Buis discloses a "pressure sensitive tape which is economical to produce, is light weight, can

Art Unit: 3635

readily be separated from the roll of the tape and has an even coat of pressure sensitive adhesive on the adhesive side of the fabric” does not in any way indicate, teach or suggest that Buis is not fit for bridging gaps between building modules.

Applicant’s argument that Buis does not disclose a perforated plastic or metal strip is not persuasive as Buis clearly discloses that the scrim comprises yarns of polyester which is a plastic.

In response to applicant's argument that Buis and Russell are nonanalogous art, it has been held that prior art references must either be in the field of applicant’s endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Buis clearly discloses a tape for having a rubber gum adhesive, and Russell discloses tape having a rubber adhesives. Accordingly at the time the invention was made one of ordinary skill in the art would have good reason to consider these references and combine teachings. Further Applicant’s argument that one of ordinary skill in the art would not have been motivated to consider these references as applied to a tape for bridging a gap between building modules is not persuasive as the claim only functionally recites this limitation and in fact claims a tape.

Applicant’s argument that one of ordinary skill would not be motivated to combine the rubber adhesive of Russell with the tape of Buis is not persuasive. Both Buis and Russell disclose rubber adhesives, and therefore one of ordinary skill in the art would have been motivated to pursue or substitute one known rubber adhesive for another.

Applicant's argument that Venable and Buis are not combinable because neither discloses the a tape that strikes an appropriate balance between rigidity and flexibility is not persuasive. Firstly, this is not a claimed feature, secondly the tape of Buis is structurally the same as applicant's claimed tape and therefore necessarily strikes the same "balance" as applicants claimed tape.

In response to Applicant's remarks regarding a submission under 37CFR 1.132; the submission submitted in the remarks should have been submitted as a separate paper as required by 37 CFR 1.4(c). The paper has been entered, but is improper and not considered. However, all future correspondence must comply with 37 CFR 1.4.

Should Applicant properly submit the declaration on a separate paper, it would not be found persuasive because the evidence submitted does not show that the commercial success is directly derived from the invention claimed (see MPEP 716.03(b)[R-2]. Further table submitted merely shows the number of products sold, it does not provide fact or evidence that this is in fact "success" as there is no basis of comparison as to the number of products that would have otherwise been sold, by Applicant or competitors selling similar products. Additionally, there is no determination that the number of products sold is not a result of sales or promotions instead of the merits of the claimed features.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the

Art Unit: 3635

art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 28,32,33 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims recite “sufficiently rigid transversely ***such that when the tape is installed without transverse tension applied thereto***”. The specification and drawings do not sufficiently describe applying a tape without transverse tension. Appropriate correction and/or clarification is required, the claims will be examined as best understood.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5,9,16,29,32,33 are rejected under 35 U.S.C. 102(b) as being anticipated by Buis et al (5162150).

Claims 5,32. Buis discloses a tape capable for use bridging gaps between building modules of modular building, the tape including:

a tacky adhesive layer (the rubber gum pressure sensitive adhesive as disclosed in Col. 2, lines 1-5) having a lower surface and opposing upper surface; and

a porous reinforcing layer (14) embedded within the adhesive layer between the lower and upper surfaces thereof (as noted in Col. 2, lines 1-5 where the adhesive is pressed into and through the fabric);

wherein the reinforcing layer is configured to have a reinforcing layer stiffness such that the tape does not sag more than 0.5 inches when bridging a gap of four inches between building modules (where the tape of Buis contains all the same structural elements as applicant's claimed invention and therefore is certainly capable of the same claimed bridging without sagging, just as the structure of Applicant's invention is capable of the claimed limitation as there are no structural distinctions between devices).

Claim 9. The tape of claim 5 wherein the tape is configured to be sufficiently flexible longitudinally to permit its being rolled into a roll of tape (Col. 1, lines 10-14).

Claims 16,29,33. The tape of claim 5 further including a protective outer layer (12) permanently adhered to the upper surface of the adhesive layer.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buis (5162150).

Claim 6. The tape of claim 5 wherein the reinforcing layer includes a porous scrim material having a scrim width at least as great as the width of the gap; where the

Art Unit: 3635

gap is only functionally claimed and Buis discloses having the tape in any desired width for a desired use. Therefore it would have been obvious to one of ordinary skill in the art to provide the scrim material of a sufficient width for the intended use of covering a gap since it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237. One of ordinary skill in the art would have recognized that dimensioning the scrim to be at least as wide as the gap would result in a tape sufficient to cover the gap in a manner that resists damage due to extreme hot conditions (such as over a gap on a roof exposed to the sun).

Claim 7. The tape of claim 6 wherein the scrim material includes interstices penetrated by the adhesive layer (Col. 1, lines 32-33; Col. 2, lines 1-5).

Claim 8. Buis discloses the tape of claim 7 as above, but does not expressly disclose that the scrim material is a perforated plastic or metal strip (Cols. 1-2, where Buis discloses a porous fiberglass fabric of polyester yarns (where polyester is a plastic) having an open mesh, or perforated structure; therefore Buis discloses a perforated plastic strip).

Claims 11-12,13,15,18,19,21,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buis (5162150) in view of Russell et al (7000360).

Claims 11-12,15. Buis discloses the tape of claim 5 as above, but does not expressly disclose that the adhesive layer includes at least one of the materials selected from a group consisting of EPDM, EPR, TPO PVC, Neoprene, Butyl Polyisobutylene, Halogenated Butyl, Halogenated Polysobutylene, Isobutylene, reclaimed Butyl, natural rubber and Polydimethylsiloxane (PDMS) and includes a blend of uncured Butyl and

Art Unit: 3635

semi-cured polymers or cross linked polymers. Buis does disclose a rubber gum pressure sensitive adhesive.

It is notoriously common and well known to make a rubber gum pressure sensitive adhesive from at least some or all of the claimed materials including a blend of uncured Butyl and semi-cured polymers or cross linked polymers. For example, Russell discloses that it is known to make a rubber gum adhesive with butyl rubber, natural rubber or EPDM as well as others (see Col. 1, line 63-Col. 2, line 67; Col. 5, line 6-52) with a blend of uncured Butyl and semi-cured polymers or cross linked polymers. Accordingly it would have been well within the general skill and common sense of one of ordinary skill in the art to make the pressure sensitive adhesive of Buis of any of the claimed materials as disclosed by Russell as it has been held that the selection of a known material on the basis of its suitability for the intended use is a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claim 13. Buis discloses the tape of claim 5 as above, but does not disclose that the adhesive layer with the reinforcing layer embedded therein has a thickness between at least substantially 0.040 and 0.060.

It is common and known in the art to provide adhesive layers with a thickness at least substantially within the claimed range. For example, Russell discloses an adhesive layer having a thickness in the range of 20-60 mils. Therefore, it would have been obvious and well within the general skill and knowledge of one of ordinary skill in the art to use an adhesive layer within the claimed thickness to provide good adhesion and

Art Unit: 3635

embedment with the scrim layer, where it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237.

Claims 18,28. Buis discloses a tape capable of bridging a gap having a gap width between adjacent building modules, the tape including: an elastomeric adhesive layer (the rubber gum pressure sensitive adhesive as disclosed in Col. 2, lines 1-5; and having a width and a tacky lower surface and opposing tacky upper surface; a porous reinforcing layer (14) embedded entirely within the adhesive layer between the lower surface and the upper surface thereof (Col. 2, lines 1-5); the reinforcing layer having a: a multiplicity of interstices (Col. 1, lines 32-33), wherein the adhesive layer extends through the interstices of the reinforcing layer between the lower and upper surfaces thereof (Col. 2, lines 1-5); and being sufficiently rigid to bridge a gap of four inches between building modules without sagging more than 0.5 inches (where the tape of Buis contains all the same structural elements as applicant's claimed invention and therefore is certainly capable of the same claimed bridging without sagging, just as the structure of Applicant's invention is capable of the claimed limitation as there are no structural distinctions between devices) and being sufficiently flexible to be rolled into a roll of tape (Col. 1, lines 10-14).

Buis does not expressly disclose that the reinforcing layer width has a magnitude at least substantially between the gap width and the adhesive layer width or that the adhesive has a thickness between at least substantially 0.040 and 0.060 inches.

It is noted that the gap is only functionally claimed and Buis discloses having the tape and scrim in any desired width for a desired use. Therefore it would have been

Art Unit: 3635

obvious to one of ordinary skill in the art to provide the scrim material of a sufficient width, for example between the gap width and the adhesive layer width, for the intended use of covering a gap since it has been held that changes in size are viewed as obvious absent any unpredictable results. In *re Rose*, 220 F.2d 459, 105 USPQ 237. One of ordinary skill in the art would have recognized that dimensioning the scrim to be wider than the gap, but not wider than the adhesive layer would result in a tape sufficient to cover the gap in a manner that resists damage due to extreme hot conditions (such as over a gap on a roof exposed to the sun), where the scrim reinforcing would then be provided in an overlap with the adjacent modules thus reinforcing the adhesion without providing extraneous un-adhered elements; additionally, it is common and known in the art to provide adhesive layers with a thickness at least substantially within the claimed range.

For example, Russell discloses an adhesive layer having a thickness in the range of 20-60 mils. Therefore, it would have been obvious and well within the general skill and knowledge of one of ordinary skill in the art to use an adhesive layer within the claimed thickness to provide good adhesion and embedment with the scrim layer, where it has been held that changes in size are viewed as obvious absent any unpredictable results. In *re Rose*, 220 F.2d 459, 105 USPQ 237.

Therefore it would have been obvious to provide the tape of Buis with width and thickness of Russell, as noted above, where such a combination provides a tape that anticipates applicant's claimed invention and this sufficiently rigid to bridge a gap of four inches between building modules without sagging more than 0.5 inches as there are no

Art Unit: 3635

distinguishing structural features between applicant's claimed tape and that of the prior art as above.

Claims 19, 21. Buis in view of Russell disclose the tape of claim 18 as above, wherein the scrim material is selected from a group consisting of a perforated plastic or metal strip (Cols. 1-2, where Buis discloses a porous fiberglass fabric comprised of polyester fibers, and is therefore a perforated plastic scrim); but

Buis does not expressly disclose that the adhesive layer includes at least one of the materials selected from a group consisting of EPDM, EPR, TPO PVC, Neoprene, Butyl Polyisobutylene, Halogenated Butyl, Halogenated Polysobutylene, Isobutylene, reclaimed Butyl, natural rubber and Polydimethylsiloxane (PDMS) and includes a blend of uncured Butyl and semi-cured polymers or cross linked polymers.

Buis does disclose a rubber gum pressure sensitive adhesive. It is notoriously common and well known to make a rubber gum pressure sensitive adhesive from at least some or all of the claimed materials including a blend of uncured Butyl and semi-cured polymers or cross linked polymers. For example, Russell discloses that it is known to make a rubber gum adhesive with butyl rubber, natural rubber or EPDM as well as others (see Col. 1, line 63-Col. 2, line 67; Col. 5, line 6-52) with a blend of uncured Butyl and semi-cured polymers or cross linked polymers. Accordingly it would have been well within the general skill and common sense of one of ordinary skill in the art to make the pressure sensitive adhesive of Buis of any of the claimed materials as disclosed by Russell as it has been held that the selection of a known material on the

Art Unit: 3635

basis of its suitability for the intended use is a matter of obvious design choice. In re Leshin, 125 USPQ 416.

Claims 17,20,34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buis (5162150) in view of Russell et al (7000360) and further in view of Applicant Admitted Prior Art (AAPA).

Claims 17,20. Buis in view of Russell disclose the tape of claims 16,18 including a protective outer layer permanently adhered to and covering the tacky upper surface of the adhesive layer, where the protective outer layer is non-adhesive, but does not disclose that the thickness is between 0.040-0.060 inches.

It is common and known in the art to provide a permanent layer on a roof bridging tape with a thickness at least substantially within the claimed range. For example, Applicant discloses in the specification at paragraph 0007 that it is known to have roofing tape membranes of thickness between 0.04 and 0.06 inches. Therefore, it would have been obvious and well within the general skill and knowledge of one of ordinary skill in the art to have a permanent layer having a thickness from within the claimed thickness to provide strong and durable tape, where it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237.

Claim 34. Buis discloses the tape of claim 33 as above, but does not expressly disclose that the reinforcing layer is a polypropylene or polyethylene and has a thickness between at least substantially 0.03 and 0.05 inches or that the adhesive layer has a thickness between at least substantially 0.04-0.06 inches.

However, it is common and well known to provide roofing tapes with a thickness of between 0.04 and 0.05 inches (see AAPA paragraph 0007) and adhesive layers having a thickness between 0.04 and 0.06 (where Russell discloses an adhesive layer having a thickness in the range of 20-60 mils). Therefore, it would have been obvious and well within the general skill and knowledge of one of ordinary skill in the art to use an adhesive and reinforcing layers within the claimed thickness to provide good adhesion and embedment with the scrim layer, where it has been held that changes in size are viewed as obvious absent any unpredictable results. *In re Rose*, 220 F.2d 459, 105 USPQ 237.

Additionally, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the polyester material of Buis to be polypropylene or polyethylene, since it has been held to be within the general skill of worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Claims 30,31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buis (5162150) in view Applicant Admitted Prior Art (AAPA).

Claim 30. Buis discloses the tape as in claim 29 above, where the reinforcing layer includes a screen like mesh having apertures formed therein, but does not expressly disclose that the reinforcing layer width is not greater than the width of the adhesive layer or that the adhesive has a thickness no greater than 0.060 inches.

It is noted that the gap is only functionally claimed and Buis discloses having the tape and scrim in any desired width for a desired use. Therefore it would have been

Art Unit: 3635

obvious to one of ordinary skill in the art to provide the scrim material of a sufficient width, for example between the gap width and the adhesive layer width, for the intended use of covering a gap since it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237. One of ordinary skill in the art would have recognized that dimensioning the scrim to be wider than the gap, but not wider than the adhesive layer would result in a tape sufficient to cover the gap in a manner that resists damage due to extreme hot conditions (such as over a gap on a roof exposed to the sun), where the scrim reinforcing would then be provided in an overlap with the adjacent modules thus reinforcing the adhesion without providing extraneous un-adhered elements;

additionally, it is common and known in the art to provide a roof bridging tape with a thickness no greater than 0.06 inches. For example, Applicant discloses in the specification at paragraph 0007 that it is known to have roofing tape membranes of thickness between 0.04 and 0.06 inches. Therefore, it would have been obvious and well within the general skill and knowledge of one of ordinary skill in the art to have a permanent layer having a thickness from within the claimed thickness to provide strong and durable tape, where it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237.

Claim 31. The tape of claim 30, wherein the reinforcing layer includes a series of elongated fibers having a long axis extending transversely within the adhesive layer, the elongated fibers being spaced from each other along the length of the tape(Col. 1, lines 32-47).

Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Venable (4996812) in view of Buis (5162150).

Claims 22,23. Venable discloses a roof system for a building including adjacent building modules with roof sections having a gap therebetween, the roof system including:

roof membranes (18) covering roof sections and providing coextensive spaced edge strips along the gap (as seen in the figures); and

a tape (26) positioned over the gap, the tape including:

an elastomeric adhesive layer having a tacky upper surface and an oppositely facing tacky lower surface sealably adhered to the spaced edge strips of the roof membranes (Col. 3, line 37-Col. 4, line 9);

protective outer layer (the membrane the adhesive is laminated to; Col. 3, lines 66-67) adhered to the supper surface of the adhesive layer.

Venable does not expressly disclose a porous reinforcing layer in the adhesive.

It is common and well known in the art to include a porous reinforcing layer embedded within an adhesive layer as claimed. For example, Buis discloses a tape having a protective membrane (12) with an adhesive (the gum rubber pressure sensitive adhesive) having a porous reinforcing layer (14) including a scrim material having interstices therethrough (Col. 1, lines 32-33) embedded within the adhesive layer where the adhesive extends through the interstices (Col. 2, lines 1-5).

It would have been obvious to one ordinary skill in the art at the time the invention was made to modify the tape of Venable to have a porous reinforcing layer

Art Unit: 3635

embedded in the adhesive as disclosed by Buis to provide strong tape that is more resistant to extreme hot conditions (which would be prevalent on a roof exposed to the sun); where the reinforcing layer of the tape of Venable in view of Buis is has a reinforcing layer stiffness configured such that when the tape is adhered to the roof membranes, the tape is configured to bridge four-inch gaps between adjacent building modules without sagging more than 0.5 inches between the roof sections (where the reinforcing layer of Buis is capable of providing the claimed stiffness just as applicant's claimed reinforcing layer and tape is as there are no distinguishing structural features that would enable applicant's claimed tape to be capable of the claimed limitation and the prior art tape incapable).

Claim 24. Venable in view of Buis discloses the roof system of claim 23, but does not expressly disclose that the width of the reinforcing layer is substantially equal to the width of the gap and substantially equal to or smaller than the width of the reinforcing layer. However, it would have been obvious to one of ordinary skill in the art to provide the scrim material of a sufficient width, for example between the gap width and the adhesive layer width, for the intended use of covering the gap since it has been held that changes in size are viewed as obvious absent any unpredictable results. In re Rose, 220 F.2d 459, 105 USPQ 237. One of ordinary skill in the art would have recognized that dimensioning the scrim to be wider than the gap, but not wider than the adhesive layer would result in a tape sufficient to cover the gap in a manner that resists damage due to extreme hot conditions (such as over a gap on a roof exposed to the sun), where the scrim reinforcing would then be provided in an overlap with the adjacent

modules thus reinforcing the adhesion thereto without providing extraneous un-adhered elements.

Claim 25. Venable in view of Buis discloses a method of using the roof system of claim 23 including the steps of: providing the tape with a release strip temporarily adhered to the tacky surface, positioning the tape over the gape, and adhering it to the adjacent roof membranes (Col. 3, line 65- Col. 4, line 9) where Venable discloses adhering to the roof membrane in a step that does not include placing a stiff bridging member over the gap.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSICA LAUX whose telephone number is (571)272-

Art Unit: 3635

8228. The examiner can normally be reached on Monday thru Thursday, 9:00am to 5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on 571-272-6928. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jessica Laux/
Primary Examiner, Art Unit 3635